

TESTIMONY OF
ASSEMBLYMAN JOSEPH CANCIAMILLA
11TH ASSEMBLY DISTRICT
CHAIRMAN OF THE
ASSEMBLY WATER, PARKS & WILDLIFE COMMITTEE
BEFORE THE
CALIFORNIA PERFORMANCE REVIEW COMMISSION
AT THE
UNIVERSITY OF CALIFORNIA
RIVERSIDE CAMPUS
AUGUST 13, 2004

WATER ISSUES IN CHAPTER 4 OF THE CALIFORNIA PERFORMANCE REVIEW

Water policy in California is rapidly evolving. We are finding new solutions to old problems, but new problems are also arising. Tools for water management like conjunctive use, desalination, groundwater storage, and water transfers are increasingly being put into use.

On the other hand, water quality, fisheries restoration, and other environmental considerations are raising challenges to the established ways of storing and distributing water. There is a great need for creative thinking and cooperative action among urban, agricultural, and environmental water users. Although the conflicts are deep, there have been some very successful collaborations among different groups in the last few years.

CALIFORNIA WATER IN GENERAL

Most of the state of California has a semi-arid climate. Precipitation falls in the form of rain or snow only in the fall, winter, and spring. There is practically no precipitation in the state during the summer, except occasionally in the extreme northwest corner of the state. The demand for water peaks in the summer, however. Furthermore, approximately 75 percent of the annual precipitation falls in the northern one-third of the state, while more than 75 percent of the urban and agricultural demand occurs in the southern two-thirds of the state.

California has been able to support a huge economy, including large metropolitan cities in relatively dry areas, by developing a complex system of redistribution of the available water. The system uses storage reservoirs, rivers, pipelines, and aqueducts to move water from areas where it is abundant to areas where it is needed. Most of this infrastructure was built between 1900 and the 1960's. Much of it is aging and will need to be repaired or replaced in the future. As the state grows, it will need more infrastructure and improvements to existing infrastructure to meet the new demand.

California also uses a large amount of groundwater. Some groundwater basins have been overdrafted for decades, creating issues of sustainable yield. Groundwater quality is also a major issue.

California's annual precipitation is estimated to be about 200 million acre feet, on average. About 71 million acre feet of this is available as runoff. Of this amount:

- 36 percent flows into the ocean
- 28 percent is committed to wild and scenic rivers and San Francisco Bay-Delta outflow
- 28 percent is used by agriculture
- 7 percent is used by cities and industry

The total amount exceeds the annual urban and agricultural demand by about 40 percent. In addition, California's 30 largest storage structures have a capacity of more than 30 million acre feet of water.

There are problems, however, in meeting the state's demand for water. Annual or seasonal supplies of surface water may vary widely, depending on snow and rainfall. The greatest demand often occurs when the supply is least. Increasingly, environmental needs, especially for fish, are being taken into account and water traditionally allocated to cities and farms is being reallocated to instream uses. Environmental (as well as economic) concerns have led to increased water use efficiency measures such as conservation, recycling, and conjunctive use to lessen demand and avoid some of the need for new infrastructure.

To establish and maintain a balance between urban and agricultural needs and the needs of the natural environment will require a great deal of creativity and cooperation in the future. Despite the intensity of some of the conflicts over water supply, the state has made considerable efforts toward reaching balance in many areas. Obviously, much more needs to be done.

INFRASTRUCTURE

Several large projects convey water from where it is most abundant to where it is most needed in California. These include the federal Central Valley Project, the State Water Project, the Colorado River Aqueduct of the Metropolitan Water District of Southern California, the Los Angeles Aqueduct, the East Bay Municipal Utilities District's Mokelumne River Aqueduct and reservoirs, the City of San Francisco's Hetch Hetchy system, and the All American and Coachella Valley Aqueducts in the Imperial Valley. The largest of these projects is the federal Central Valley Project, which serves primarily agricultural water users in the Sacramento and lower San Joaquin Valleys. The State Water Project is the only project owned and operated by the State of California.

THE STATE WATER PROJECT

Twenty-nine contractors have signed contracts with the state Department of Water Resources (DWR) for the delivery of a maximum of 4.17 million acre feet per year from the State Water Project (SWP). The contractors serve 23 million people. Five of the contractors use SWP water primarily for agriculture; the rest use the water primarily for municipal purposes. About 30 percent of the water goes to agriculture; 70 percent goes to urban uses.

The SWP is the largest single user of electricity in the state. It is also one of the largest generators of electricity.

The SWP takes its water from the Feather River and moves it south through the California Aqueduct, which ends south of San Bernardino. Branches of the system go to Napa, the Santa Clara Valley, and San Luis Obispo. The total length of the aqueducts operated by the SWP is 662 miles.

The SWP contractors pay a fixed amount of money every year, regardless of the amount of water that is actually delivered. In dry years, the SWP delivers considerably less than its developed capacity, which even in wet years is less than the amount of water for which the contractors originally contracted. Although its facilities were originally designed to deliver 4.2 million acre feet of water per year, the most the SWP has actually been able to deliver has been 3.2 million acre feet, because the SWP has not been completed.

The SWP's facilities are aging, and the costs of operation are increasing. Although the SWP is owned by the State of California, its costs are entirely borne by the 29 contractors. Eventually, major overhauls to parts of the system will become necessary. It is doubtful that the contractors will be able to fully pay for the improvements needed without imposing crippling rate increases on their ratepayers. State help in financing these infrastructure improvements will be necessary and desirable.

THE STATE WATER PROJECT AND THE CPR

The California Performance Review (CPR) recommends that the SWP be spun off with its own governing Authority. The SWP is well-suited for this type of recommendation. Although it is currently administered by DWR, the SWP is a self-contained operation that has its own separate source of funding. Removing the SWP from DWR would relieve DWR of a major burden, and, depending on the makeup of the Authority, give the contractors a greater role in operating, maintaining, and eventually improving the project.

The CPR recommends that certain contractors take over parts of the SWP system that serve only those contractors. This could allow the contractors to better integrate the SWP system with their own infrastructure needs, and to introduce efficiencies through coordination with local systems. Spinning off sections of the system to local agencies could also give the local contractors control over eventual improvement and replacement of their portions of the system, while relieving state taxpayers in other areas from having to bear the burden of paying for needed improvements. Local control could help to improve integration of SWP water supplies with local resources, which could improve water supply reliability and efficiency for local ratepayers.

THE CALFED BAY-DELTA PROGRAM

The CALFED Program began with the Bay-Delta Accord in June 1994. The Accord was an agreement among state and federal agencies to coordinate their efforts to meet water quality standards in the Bay and Delta, coordinate the operations of the State Water Project (SWP) and the federal Central Valley Project (CVP) to meet environmental mandates, and to establish long-term solutions to Bay-Delta problems in four categories: ecosystem restoration, water quality, water supply reliability, and levee system integrity.

In August 2000, having completed the programmatic environmental documents, the state and the federal governments adopted the federal Record of Decision (ROD) as the blueprint for a thirty-year effort. The ROD sets forth the elements of the CALFED

Program, based on the preferred alternative identified in the programmatic Environmental Impact Report/Environmental Impact Statement (EIS/EIR). The ROD calls for a "permanent joint Federal-State commission with shared power to appoint commission members". In 2002, the Legislature passed and the Governor signed SB 1653, which established the California Bay-Delta Authority (Authority) to oversee the CALFED Program. SB 1653 took effect on January 1, 2003.

Before the establishment of the Authority, the CALFED Program was administered by the Resources Agency. For the most part, the CALFED administration was involved in developing and funding projects using bond funds and some general fund dollars. Many of the projects involved partnerships with local agencies.

The previous CALFED administration, however, did not have the powers of a corporate entity to contract, so it had to rely on other state and federal agencies to carry out many of the actions that the Authority will be equipped to handle. The CALFED administration's authorities were mostly persuasive.

The ROD and the June 2000 Framework for Action call for expenditures in the first seven years of the CALFED Program of approximately \$8.6 billion. California has committed approximately \$1 billion for the first two years, but the federal government has only committed approximately \$130 million. Proposition 50, passed by the voters in November, 2002, provides an additional \$850 million in state bond funds. The establishment of the Authority may create an incentive for Congress to reauthorize federal participation in CALFED and provide a larger share of the funding.

One of CALFED's features is the Environmental Water Account. The Environmental Water Account is intended to provide nearly 300,000-acre feet of water for environmental needs each year without reducing deliveries to farms and cities. Water is purchased and stored North of the Delta for use at times of the year when additional flows are needed to protect fish migrations and to prevent the intrusion of saltwater into the Delta.

The federal and state agencies that participate in the CALFED Program have independent powers and duties that cannot be entirely subordinated to the Authority. There are constitutional considerations as to whether federal agencies may participate in a program in which the governing agency is a state agency. Furthermore, the federal authorization for CALFED has lapsed, and has yet to be renewed or funded.

The Authority includes representation from the lead state and federal agencies, with an invitation to Congress to pass legislation authorizing full participation of the federal agencies. The Authority also includes representation of the public through the appointment of five public members, one from each of the five regions of the CALFED service area, as well as one member from BDPAC. The five public members will be appointed by the Governor, with the concurrence of the Secretary of the Interior. Although this structure does not provide direct representation to any particular stakeholder group, the five public members must be well versed in areas of expertise

relating to the CALFED Program, and that the representation must be as well balanced as possible.

Because Congress has not reauthorized federal participation in the CALFED Program, the Authority sunsets on January 1, 2006, if Congress has not acted by then. This allows the state to reorganize the CALFED governance structure and decide how to proceed on its own, if necessary.

The Authority has the usual powers of a corporate entity, i.e., to sue or be sued, to contract, etc. The Authority has the power to receive funds, adopt regulations, obtain and hold regulatory permits, and prepare environmental documents.

The Authority's duties are to carry out the CALFED Program, review and report on progress in implementing the Program, propose an annual budget, coordinate with federal agencies, manage the science program element, resolve conflicts among the implementing agencies, work cooperatively with local agencies, and develop a streamlined permitting process. The Authority also reviews and approves work plans and budgets relating to the CALFED Program that are prepared by the implementing agencies.

THE CALFED BAY-DELTA PROGRAM AND THE CPR

The CPR points out that the CALFED program is behind schedule and underfunded. It lacks performance measures to show what progress is being made with the funds being expended. Lack of federal authorization has hampered the program due to lack of funding and clear direction to federal agencies as to how they are to participate in the program. The CPR recommends that the CALFED program be audited to determine what progress has been made and to develop performance measures for evaluation of future expenditures. The CPR also recommends that the Authority be given approval authority for strategic plans, performance measures, and prioritized implementation actions and budgets.

The CALFED program is an innovative attempt to reconcile a large number of conflicting interests. For years, state and federal agencies regulating water quality, fisheries, and operating the CVP and SWP, were often operating at cross-purposes. The effort to bring these agencies together and reduce these conflicts has been very successful in many ways, and less successful in others. The CALFED program is a delicate balancing of many points of view and many sources of authority.

The Authority is new, and is still getting its legs under it. It is working to figure out how it can best organize itself to provide guidance to the agencies it oversees. It is currently still in the process of developing criteria for reviewing budgets and program plans. The Authority has no actual ability to compel any agency to comply with its orders, so its role is largely persuasive, and is based on the continued agreement of the agencies to participate in the program. Once the Authority has determined how it is going to proceed, it will be better able to accomplish its objectives and to report on its performance.

To date, the program has spent more than \$2.6 billion to implement the CALFED program, primarily from state bonds. Most of this money to date has been spent on ecosystem restoration and water supply reliability,, while water quality, and levee repairs have received a smaller share. When the funds provided by Proposition 50 run out in the next two or three years, there will not be enough money left to allow the Authority to operate, let alone conduct any major projects. The Authority is working on a long-term financing plan, but a great deal hinges on whether the federal government will participate to the extent that was originally envisioned, and on what amount of the financial burden various water users will be willing to carry.

Ultimately, the existing CALFED program is better than the alternative of conflict and never-ending litigation. The recommendations of the CPR are consistent with the ROD and the statute establishing the Authority. These documents call for transparency and accountability. Development of performance measures and a financing plan can only benefit the program. The Authority is currently working on a 10 year financing plan that is on track to be completed within the time frame mentioned in the CPR.

WATER POLICY

The CPR calls for an update to the California Water Plan concept. It also calls for integration of the Water Plan into a state general plan process. The CPR recommends as well that the Governor work with the Legislature to promote regional water planning.

Existing law requires that the Water Plan be updated every five years. The last update to the Water Plan was completed in 1998. The update that was to have been completed in 2003 has been delayed, largely because, despite considerable modernization of the concept and innovative thinking, the draft Water Plan totally failed to address the issue of above-ground storage. Although above-ground storage is a less popular concept in developing water resources than it was in the past, it is still an important tool in the development of water supply. There are proposals for additional storage that are being studied in the CALFED program and may someday be identified as a means of meeting the program's goals and objectives. To leave this entire means of developing water supply out of the Water Plan creates a gaping hole in California's water policy.

The CPR recommends the promotion of regional water planning. If there has been a success story in the field of water policy in the past ten years, it has been in the rise of regional, integrated water planning. More and more often, this concept is being used to resolve conflicts within and among regions, and to develop more efficient and cost-effective projects that solve multiple problems at the same time. It is very important that the state continue to promote integrated regional planning, and multi-objective projects.

WATER, PARKS, AND WILDLIFE BOND IMPLEMENTATION

The CPR points out that implementation of water, parks, and wildlife grant programs is fragmented, cumbersome, and inefficient. Bond funds for water projects are distributed through a variety of agencies and sub-agencies, including DWR, the State Water

Resources Control Board, the Department of Health Services, and others. Bonds, as they are passed by the voters, are not consistent with previous bonds and establish new programs, priorities, and requirements. Agencies that administer grant programs are required to deal with the differing nuances of each successive bond act. The latest water and land acquisition bond was developed by private entities, rather than by the Legislature, and contained some conditions, drafting errors, and private priorities that complicated administration of the programs considerably.

Consolidation of grant programs would greatly improve the timeliness and efficiency of getting the money out. Consolidation would also help to control the cost of program administration. Another consideration that could help to improve bond administration would be development of a model for bond drafting.

FLOOD CONTROL

The national flood control program was enacted in 1936. The program required non-federal interests to pay the costs of rights of way and relocations for channel improvements and levee projects. State law enacted in 1945 provided for reimbursements to local flood control agencies for all rights of way and relocation costs of channel improvements and levee projects. In 1973, the state statute was changed to allow state-local cost sharing for the flood damage prevention features of channel improvement and levee projects. State participation in the non-federal costs of recreation and fish and wildlife enhancement features was also added to the program in 1973. In 1988, the state statute was changed to reflect changes in federal policy that were made in 1986.

The State of California, through DWR, will pay a portion of the cost of a local flood control project under the following conditions:

- 1) The Chief Engineer of the Army Corps of Engineer has studied and approved the project;
- 2) Federal participation in the project has been authorized by Congress;
- 3) The total annual benefit of providing flood protection exceeds the annual cost of the project allocable to flood management;
- 4) The project's local sponsor complies with federal law requiring the preparation and implementation of a flood management plan; and,
- 5) The project's planning documents must include an evaluation of opportunities to include multipurpose objectives.

Originally, the state paid 70 percent of the non-federal share of each flood control project. Assembly Bill 1147 (2000) changed the traditional 70/30 state/local split to a 50/50 split for flood control project costs. AB 1147 also included a list of considerations that may

be evaluated to increase the state share to a maximum of 70 percent. These considerations may include any one of the following:

- 1) Protection or enhancement of important habitats, such as habitats for endangered species.
- 2) Protection or enhancement of open space.
- 3) Development or enhancement of recreational opportunities.
- 4) Increased level of flood protection in a low-income area.
- 5) Increased level of flood protection for state transportation facilities or state water supply facilities.

The state has a backlog of claims for subventions, without adequate funding to pay for all of them. The amount of funds that will be available to pay flood control subventions in the future will depend on upcoming budgets or future water bonds.

Much of flood control policy is driven by federal and local interests. Counties have land use authority over permitting development in floodplains. The state's main role in flood control is to provide subventions, to forecast flooding events, and to maintain a portion of the state's levee systems. Levee system integrity is one of the Bay-Delta Authority's major program areas. The state could acquire land to create levee setbacks and wider floodplains, subject to local land use authority. However, the state has inadequate funds to carry out even its limited role. Development of a long-term financing plan for flood control is critical to prevent disasters.

CONCLUSION

Overall, the CPR makes valuable and useful recommendations in the area of water policy. Water policy issues are often divisive and lead to conflict. Water policy is driven by conflicting authorities among state, federal, and local agencies. Also, during the ongoing budget crisis, funding for water issues at the state level has seriously decreased.

On the positive side, there has been an increasing willingness among water users to work together on integrated regional planning and projects. These plans and projects integrate a variety of water policy tools to increase water supply reliability, improve water quality, protect and restore the environment, and provide flood control.

Also, the CALFED program is beginning to operate under the direction of the California Bay-Delta Authority, which is slowly but surely developing its role. As the Authority matures, it should be increasingly effective in meeting the objectives of the ROD.

Finally, although state water operations have been quite good in the past, there are things that can be done to improve the efficiency of the administrative agencies and programs,

and to foster cooperation and innovation among the various participants in the water using community.

AMENDED IN SENATE JUNE 25, 2003

AMENDED IN SENATE JUNE 19, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 808

**Introduced by Assembly Members Canciamilla and Richman
(Coauthors: Assembly Members Diaz and Levine)**

February 20, 2003

An act to enact the Energy Code, and to amend Sections 11550 and 12800 of the Government Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 808, as amended, Canciamilla. Energy: agency consolidation.

(1) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. Under that act, the Energy Commission also administers existing law with respect to energy conservation and renewable electricity generation sources.

Existing law authorizes the Public Utilities Commission to regulate public utilities, including electrical and gas corporations. Under existing law, the commission is charged with issuing certificates of public convenience and necessity to every electrical and gas corporation proposing to construct or modify any electric or gas plant within the state, is authorized to determine the value of the property of

every public utility in the state, to fix the just compensation to be paid by a political subdivision for public utility property acquired by eminent domain, to hold hearings concerning complaints against certain entities, including electrical and gas corporations, and to charge and collect certain fees. Under existing law, a public utility is guilty of a crime for failing to comply with provisions of the Public Utilities Act, the California Constitution, or an order by the commission.

Under existing law, the California Consumer Power and Conservation Financing Authority Act establishes the California Consumer Power and Conservation Financing Authority (Power Authority), with certain powers and responsibilities, including the issuance of up to \$5,000,000,000 of revenue bonds, for the purposes of augmenting electric generating facilities and ensuring a sufficient and reliable supply of electricity.

Existing law establishes the Division of Oil, Gas, and Geothermal Resources within the Department of Conservation.

This bill would enact the Energy Code and would establish the Energy Agency under the administration of the Secretary of Energy, who would be appointed by the Governor and subject to confirmation by the Senate. The agency would be responsible for the planning, development, and implementation of all major aspects of the state energy policy to ensure an adequate, reasonably priced supply of electricity and natural gas. The secretary, in consultation with the Independent System Operator (ISO), would be required to determine appropriate reserve levels needed to maintain the reliability and stability of the electrical transmission and distribution grid and the Public Utilities Commission would be required to ensure that electrical corporations meet the reserve levels determined to be appropriate by the secretary. *The bill would require the Secretary of Energy to establish goals for energy conservation and resource efficiency that will achieve or exceed the conservation and efficiency goals in the Energy Action Plan jointly adopted by the Consumer Power and Conservation Financing Authority, the Energy Resources Conservation and Development Commission, and the Public Utilities Commission and to be responsible for coordination of energy conservation and resource efficiency programs and to consolidate those programs, where desirable. The bill would require the Secretary of Energy, within 90 days following confirmation, to report to the Legislature regarding liquefied natural gas, natural gas conservation measures, and other options to*



improve the supply and distribution of a reliable natural gas supply in California.

(2) The existing restructuring of the electrical services industry establishes the Electricity Oversight Board (Oversight Board) to oversee the ISO and the Power Exchange in order to ensure the success of the electrical industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure.

Existing law establishes the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy (commission) to promote economy, efficiency, and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government.

Existing law authorizes the Governor to perform executive branch reorganizations for certain purposes, except an agency whose primary purpose is service to the legislative or judicial branches or any agency that is administered by an elective officer. The reorganization plan becomes effective on the 61st day after it has been given to the Legislature unless either the Senate or the Assembly adopts, by majority vote, a resolution rejecting the plan. The Governor is required to submit for study and recommendation any reorganization plan to the Little Hoover Commission at least 30 days prior to submitting the plan to the Legislature.

This bill would require the Governor to examine and on or before May 1, 2004, submit for study and recommendation to the Little Hoover Commission, and on or before July 1, 2004, transmit to the Legislature, a plan for reorganization of the energy regulatory activities of the state. The plan of reorganization would be required to (1) establish within the Energy Agency all major policy making functions with respect to the state’s energy policy; (2) eliminate the California Consumer Power and Conservation Financing Authority and transfer its authority to the Energy Agency; (3) merge the State Energy Resources Conservation and Development Commission into the Energy Agency; (4) eliminate the Electricity Oversight Board and transfer its functions for monitoring and investigating wholesale energy markets to the Energy Agency; (5) transfer to the Energy Agency all policy making functions with respect to energy matters currently performed by the Public Utilities Commission and establish review mechanisms to ensure that the regulatory activities of the Public Utilities Commission are consistent with the state’s energy policy; (6) ~~transfer to the Energy~~



~~Agency all energy conservation programs and oversight currently performed by the Public Utilities Commission; (7) establish a single board in the Energy Agency, with responsibility for state approval for the siting of energy production, storage, and transmission facilities; (8)~~ (7) establish the Secretary of Energy as the sole authorized representative of the state before the Federal Energy Regulatory Commission (FERC); ~~(9) (8) require the ISO to report any filings or appearances before FERC to the secretary; and (10) (9) provide public oversight of the ISO by the Energy Agency, to the extent permitted under federal law; (10) establish a mechanism for the Public Utilities Commission to timely advise the siting board and the Secretary of Energy regarding the rate impacts of decisions; and (11) establish a mechanism for adequate public comment before final decisions are made and for review of decisions made by the Secretary of Energy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California's existing energy regulatory system has resulted
- 4 in significant fragmentation, duplication, overlap, and confusion
- 5 in the formulation and execution of the state's energy related
- 6 functions.
- 7 (b) Having a single agency that is responsible for the state's
- 8 energy policy will better ensure that the state sends a clear and
- 9 consistent message to the public, the business community, the
- 10 energy industry, and financial markets relative to policy objectives
- 11 and the means to carry out those objectives. Consolidating energy
- 12 policy making into a single lead agency will ensure that all
- 13 agencies advocate for, and carry out, one state energy policy, rather
- 14 than disagreeing on elements of energy policy as they have in the
- 15 past.
- 16 (c) Having a cabinet-level gubernatorial appointee with
- 17 responsibility for overseeing a single agency that is responsible for
- 18 the state's energy policy will promote accountability to the
- 19 Legislature and the public for policy, legal, and administrative
- 20 actions.



1 (d) Having a single agency that is responsible for the state's
2 energy policy will eliminate duplication of effort and save money
3 in research, developing policy, program design and coordination,
4 program implementation, consumer protection, and compliance
5 with environmental objectives and protections. Consolidation will
6 reduce the number of high-level officials responsible for policy,
7 legal, communications, and administrative issues.

8 (e) Having a cabinet-level gubernatorial appointee with
9 responsibility for overseeing a single agency that is responsible for
10 the state's energy policy will allow for more timely and
11 comprehensive responses to shortages, emergencies, and
12 enforcement issues, because of decreased potential for conflicts
13 between agencies.

14 (f) Having a single agency responsible for the siting of
15 generation, transmission, and natural gas infrastructure will
16 increase the efficiency and effectiveness of the siting process,
17 thereby helping to ensure Californians will receive a reliable
18 supply of energy at a reasonable cost.

19 (g) It is the intent of the Legislature to enact an Energy Code,
20 under the governance of the Energy Agency.

21 (h) It is the further intent of the Legislature that the Energy
22 Agency be responsible for the development of the state's energy
23 policy and for strategic planning on how to implement the state's
24 energy policy. *The Legislature endorses the goals and actions of*
25 *the Energy Action Plan jointly adopted by the Consumer Power*
26 *and Conservation Financing Authority, the Energy Resources*
27 *Conservation and Development Commission, and the Public*
28 *Utilities Commission, subject to change and refinement over time*
29 *in order to adapt to changing conditions and legislative direction.*

30 (i) It is the further intent of the Legislature that the Public
31 Utilities Commission carry out its regulatory powers and
32 jurisdiction over public utilities in a manner that is consistent with
33 the state's energy policy, as developed and refined by the Energy
34 Agency. The Energy Agency will set policy and the Public Utilities
35 Commission will implement it in the regulatory arena.

36 (j) It is the further intent of the Legislature that the Joint
37 Legislative Audit Committee, Senate Energy, Utilities and
38 Communications Committee, and Assembly Utilities and
39 Commerce Committees hold regular oversight hearings on agency
40 activities, including agency expenditures and policy planning.

1 SEC. 2. (a) The Governor shall examine and on or before
2 May 1, 2004, submit for study and recommendation to the Milton
3 Marks “Little Hoover” Commission on California State
4 Government Organization and Economy established pursuant to
5 Chapter 6 (commencing with Section 8501) of Division 1 of Title
6 2 of the Government Code, a plan for reorganization of the energy
7 regulatory activities of the state, pursuant to Article 7.5
8 (commencing with Section 12080) of Chapter 1 of Part 2 of
9 Division 3 of Title 2 of the Government Code.

10 (b) The Governor shall on or before July 1, 2004, transmit to
11 the Legislature, a plan for reorganization of the energy regulatory
12 activities of the state pursuant to Article 7.5 (commencing with
13 Section 12080) of Chapter 1 of Part 2 of Division 3 of Title 2 of
14 the Government Code.

15 (c) The Governor’s plan of reorganization shall include all of
16 the following provisions:

17 (1) Establish within the Energy Agency all major policy
18 making functions with respect to the state’s energy policy.

19 (2) Eliminate the California Consumer Power and
20 Conservation Financing Authority and transfer its authority to the
21 Energy Agency.

22 (3) Merge the State Energy Resources Conservation and
23 Development Commission into the Energy Agency.

24 (4) Eliminate the Electricity Oversight Board and transfer its
25 functions for monitoring and investigating wholesale energy
26 markets to the Energy Agency.

27 (5) Transfer to the Energy Agency all policy making functions
28 with respect to energy matters currently performed by the Public
29 Utilities Commission and establish review mechanisms to ensure
30 that the regulatory activities of the Public Utilities Commission are
31 consistent with the state’s energy policy. *The Secretary of Energy*
32 *shall have standing to appeal a decision of the Public Utilities*
33 *Commission on the grounds that the decision is inconsistent with*
34 *the state’s energy policy.*

35 ~~(6) Transfer to the Energy Agency all energy conservation~~
36 ~~programs and oversight currently performed by the Public~~
37 ~~Utilities Commission.~~

38 ~~(7)–~~

39 (6) Establish a single board in the Energy Agency, with
40 responsibility for state approval for the siting of energy

1 production, storage, and transmission facilities, including electric
2 plant and gas plant, that will coordinate with agencies with
3 environmental protection responsibilities. *In making energy*
4 *facility siting decisions, the board shall consider energy*
5 *conservation and resource efficiency options and alternatives.*
6 The decisions of the board on any application for certification of
7 a site and related facility are subject to judicial review by the
8 Supreme Court of California.

9 ~~(8)~~

10 (7) Establish the Secretary of Energy, or the designee of the
11 secretary, as the sole authorized representative of the state before
12 the Federal Energy Regulatory Commission.

13 ~~(9)~~

14 (8) Require the Independent System Operator to report any
15 filings or appearances before the Federal Energy Regulatory
16 Commission to the Secretary of Energy.

17 ~~(10)~~

18 (9) Provide for public oversight of the Independent System
19 Operator by the Energy Agency, to the extent permitted under
20 federal law.

21 *(10) Establish a mechanism for the Public Utilities*
22 *Commission to timely advise the board responsible for siting*
23 *energy facilities and the Secretary of Energy, regarding the rate*
24 *impacts of decisions made by the board and the secretary, to avoid*
25 *unexpected adverse rate impacts.*

26 *(11) Establish a mechanism for adequate solicitation and*
27 *consideration of public comments before final decisions are*
28 *rendered and for the review of final decisions made by the*
29 *Secretary of Energy, that will protect the public from arbitrary or*
30 *capricious decisions, ensure that decision are reasonable and*
31 *supported by fact, while ensuring that decisions are implemented*
32 *in a timely and responsive manner.*

33 SEC. 3. The Department of Finance may direct the transfer of
34 unexpended and unencumbered balances of appropriations and
35 other funds available for use in connection with any function
36 affected by the reorganization prescribed by the act adding this
37 section that the Director of Finance determines to be necessary to
38 facilitate the reorganization, for use in connection with the
39 functions affected by the reorganization, provided that any
40 unexpended and unencumbered balances of appropriations and

1 other funds so transferred shall be expended, as to appropriations,
2 only for purposes that were authorized by the appropriation and,
3 as to other available funds, only for purposes authorized as of the
4 effective date of the act adding this section.

5 SEC. 4. The Energy Code is enacted, to read:

6
7 DIVISION 1. PRELIMINARY PROVISIONS

8
9 CHAPTER 1. GENERAL PROVISIONS

10
11 1. This code is known as the Energy Code.

12 2. Division, chapter, article, and section headings do not affect
13 the scope, meaning, or intent of this code.

14 3. Unless the provision or context otherwise requires, the
15 general provisions and rules of construction in this division govern
16 the construction of this code.

17 4. If a reference is made to a portion of this code or to another
18 law, the reference applies to all amendments and additions
19 regardless of the time made.

20 5. Unless otherwise expressly stated:

21 (a) “Division” means a division of this code.

22 (b) “Part” means a part of the division in which that term
23 occurs.

24 (c) “Chapter” means a chapter of the division or part, as the
25 case may be, in which that term occurs.

26 (d) “Article” means an article of the chapter in which that term
27 occurs.

28 (e) “Section” means a section of this code unless some other
29 statute or code is specifically mentioned.

30 (f) “Subdivision” means a subdivision of the section in which
31 that term occurs unless some other section is expressly mentioned.

32 (g) “Paragraph” means a paragraph of the subdivision in
33 which that term occurs.

34 (h) “Subparagraph” means a subparagraph of the paragraph in
35 which that term occurs.

36 6. The present tense includes the past and future tenses, and
37 the future, the present.

38 7. The masculine gender includes the feminine and the neuter.

39 8. The singular number includes the plural, and the plural, the
40 singular.

1 9. “Shall” is mandatory and “may” is permissive. “Shall
2 not” and “may not” are prohibitory.

3 10. “Oath” includes affirmation.

4 11. “Signature” or “subscription” includes a mark when the
5 signer or subscriber cannot write, such signer’s or subscriber’s
6 name being written near the mark by a witness who writes his own
7 name near the signer’s or subscriber’s name; but a signature or
8 subscription by mark can be acknowledged or can serve as a
9 signature or subscription to a sworn statement only when two
10 witnesses so sign their own names thereto.

11 12. “State” means the State of California, unless applied to
12 the different parts of the United States. In the latter case, it includes
13 the District of Columbia and the territories.

14 13. “County” includes city and county.

15 14. “City” includes city and county and “incorporated
16 town,” but does not include “unincorporated town” or “village.”

17 15. If a provision or clause of this code or its application to any
18 person or circumstances is held invalid, the invalidity does not
19 affect other provisions or applications of the code that can be given
20 effect without the invalid provision or application, and to this end,
21 the provisions of this code are severable.

22 16. No action or proceeding commenced before this code
23 takes effect, and no right accrued, is affected by this code, but all
24 procedure thereafter taken therein shall conform to this code in so
25 far as possible.

26 17. Whenever a power is granted to, or a duty is imposed
27 upon, a public officer, including the Secretary of Energy, the
28 power may be exercised or the duty may be performed by a deputy
29 of the officer or by a person authorized, pursuant to law, by the
30 officer, unless this code expressly provides otherwise.

31 18. Writing includes any form of recorded message capable of
32 comprehension by ordinary visual means. Whenever any notice,
33 report, statement, petition, or record is required or authorized by
34 this code, it shall be made in writing in the English language unless
35 it is expressly provided otherwise. Wherever any notice or other
36 communication is required by this code to be mailed by registered
37 mail by or to any person or corporation, the mailing of such notice
38 or other communication by certified mail shall be deemed to be a
39 sufficient compliance with the requirements of law.

19. Whenever reference is made to any portion of this code or of any other law of this state, the reference applies to all amendments and additions heretofore or hereafter made.

CHAPTER 2. DEFINITIONS

100. The following terms have the following meanings and shall govern the construction of this code, unless the provision or the context otherwise requires.

101. “Agency” means the Energy Agency.

102. “Corporation” includes a corporation, a company, an association, and a joint stock association.

103. “Person” includes an individual, a firm, and a copartnership.

104. “Secretary” means the Secretary of Energy.

105. As used in this code “person” and “corporation” include the lessees, trustees, receivers or trustees appointed by any court whatsoever, of the person or corporation.

106. “Public or any portion thereof” means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the state, for which the service is performed or to which the commodity is delivered.

DIVISION 2. ENERGY AGENCY

CHAPTER 1. ADMINISTRATION

200. The Energy Agency is hereby established.

201. (a) The agency is administered by the Secretary of Energy.

(b) The secretary is appointed by the Governor and subject to confirmation by the Senate.

202. (a) The secretary shall direct the departments and staff of the agency, in the performance of their duties, in accordance with statutes and agency policies and guidelines. The secretary shall be responsible for the agency’s executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the agency and expedite all matters within the agency’s jurisdiction.

1 (b) The secretary shall keep a full and true record of all
2 proceedings of the agency, issue all necessary process and notices,
3 and perform such other duties as are necessary to carry out the
4 duties of the agency.

5 (c) The secretary may appoint assistant executives who may
6 serve process on behalf of the secretary in any county or city and
7 county of this state.

8 203. The secretary may employ any officers, administrative
9 law judges, experts, engineers, statisticians, accountants,
10 inspectors, clerks, and employees as the secretary deems necessary
11 to carry out or to perform the duties and exercise the powers
12 conferred upon the agency by law. All officers and employees shall
13 receive compensation as is established by the secretary.

14 204. (a) The agency shall adopt procedures on the
15 disqualification of administrative law judges due to bias or
16 prejudice similar to those of other state agencies and superior
17 courts.

18 (b) The agency shall develop the procedures with the
19 opportunity for public review and comment.

20 205. The agency may do any of the following:

21 (a) Apply for and accept grants and contributions, and expend
22 appropriations.

23 (b) Contract for professional work or services if work or
24 services cannot be satisfactorily performed by its employees or by
25 any other state agency.

26 (c) Be sued and sue.

27 (d) Request and utilize the advice and services of all federal,
28 state, regional, and local agencies.

29 (e) Adopt any rule or regulation, or take any action, that the
30 secretary determines to be reasonable and necessary to carry out
31 this code. The agency shall adopt rules and regulations, as
32 necessary, to carry out this code in conformity with Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3 of Title
34 2 of the Government Code.

35 (f) Do any and all things necessary to carry out the purposes of
36 this chapter.

37 206. The provisions of this division specifying any power or
38 duty of the agency shall be liberally construed, to carry out the
39 objectives of this code.

1 207. As to any matter involving the federal government, its
2 departments or agencies, that is within the scope of the powers and
3 duties of the agency, the secretary may represent its interest or the
4 interest of any county, city, state agency, or district upon its
5 request, and to that end may correspond, confer, and cooperate
6 with the federal government, and its departments or agencies.

7 208. The secretary may participate as a party in any
8 proceeding that is relevant to the secretary's duties.

9
10 CHAPTER 2. OFFICES AND MEETINGS
11

12 250. (a) The agency shall maintain its headquarters in the
13 County of Sacramento and may establish branch offices in those
14 parts of the state that the agency determines to be necessary.

15 (b) The meetings of the agency shall be open and public in
16 accordance with Article 9 (commencing with Section 11120) of
17 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
18 Code.

19 (c) The agency shall have a seal, bearing the inscription
20 "Energy Agency." The seal shall be affixed to all writs and
21 authentications of copies of records and to such other instruments
22 as the director shall direct.

23 (d) The agency may procure all necessary books, maps, charts,
24 stationery, instruments, office furniture, apparatus, and
25 appliances.

26
27 CHAPTER 3. RECORDS
28

29 260. The agency shall make available any information filed or
30 submitted pursuant to this code under the California Public
31 Records Act (Chapter 3.5 (commencing with Section 6250) of
32 Division 7 of Title 1 of the Government Code), except that the
33 agency shall keep confidential any information that is required to
34 be kept confidential by federal statute, rule, or order, or that is
35 nonpublic pursuant to another provision of state law, or if the
36 secretary determines that the information is proprietary, a trade
37 secret, or that its disclosure would be likely to result in harm to the
38 functioning of the market or create a significant risk of harm to the
39 public. The secretary shall annually report to the Legislature,

1 summary information concerning information withheld from the
2 public pursuant to this section.

3
4 CHAPTER 4. LEGAL AFFAIRS
5

6 300. The Legal Affairs Department is established in the
7 Energy Agency, administered by the agency counsel, with
8 responsibility for facility compliance, permit condition
9 compliance, enforcement of all regulatory responsibilities of the
10 agency, and representation of the state's proprietary interests and
11 the interests of ratepayers.

12 301. (a) The secretary may appoint as agency counsel, an
13 attorney at law of this state, who shall hold office during the
14 pleasure of the secretary.

15 (b) The attorney shall represent and appear for the people of the
16 State of California and the agency in all actions and proceedings
17 involving any question under this code or under any order or act
18 of the agency. If directed to do so by the secretary, the attorney
19 shall intervene, if possible, in any action or proceeding in which
20 any such question is involved.

21 (c) The attorney shall commence, prosecute, and expedite the
22 final determination of all actions and proceedings directed or
23 authorized by the secretary, advise the secretary, when so
24 requested, in regard to all matters in connection with the powers
25 and duties of the agency and the members thereof, and generally
26 perform all duties and services as attorney to the agency that the
27 secretary may require of him or her.

28
29 DIVISION 3. ENERGY POLICY AND PLANNING
30

31 1000. (a) The agency shall be responsible for the planning,
32 development, and implementation of all major aspects of the state
33 energy policy. The state energy policy will ensure an adequate,
34 reasonably priced supply of electricity and natural gas.

35 (b) When agencies, departments, and commissions retain
36 powers and authority with respect to energy programs, those
37 agencies, departments, and commissions shall coordinate their
38 activities with the agency and not act in a manner that defeats the
39 state energy policy.

1001. The secretary, in consultation with the Independent System Operator, shall determine appropriate reserve levels needed to maintain the reliability and stability of the electrical transmission and distribution grid. The Public Utilities Commission shall ensure that electrical corporations meet the reserve levels determined to be appropriate by the secretary.

1002. (a) *The secretary shall establish goals for energy conservation and resource efficiency that will achieve or exceed the conservation and efficiency goals in the Energy Action Plan jointly adopted by the Consumer Power and Conservation Financing Authority, the Energy Resources Conservation and Development Commission, and the Public Utilities Commission.*

(b) *The secretary shall be responsible for coordinating energy conservation and resource efficiency programs and for consolidating those programs where desirable.*

DIVISION 4. REPORTING

4000. *The secretary shall, within 90 days following confirmation, report to the Legislature regarding liquefied natural gas, natural gas conservation measures, and other options to improve the supply and distribution of a reliable natural gas supply in California. The report shall include policy recommendations.*

SEC. 5. Section 11550 of the Government Code is amended to read:

11550. Effective January 1, 1988, an annual salary of ninety-one thousand fifty-four dollars (\$91,054) shall be paid to each of the following:

- (a) Director of Finance.
- (b) Secretary of Business, Transportation and Housing.
- (c) Secretary of Resources.
- (d) Secretary of Health and Human Services.
- (e) Secretary of State and Consumer Services.
- (f) Commissioner of the California Highway Patrol.
- (g) Secretary of the Youth and Adult Correctional Agency.
- (h) Secretary of Food and Agriculture.
- (i) Secretary of Technology, Trade, and Commerce.
- (j) Secretary of Veterans Affairs.
- (k) Secretary of Labor and Workforce Development.

(l) Secretary of Energy.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 6. Section 12800 of the Government Code is amended to read:

12800. There are in the state government the following agencies: State and Consumer Services; Business, Transportation and Housing; California Environmental Protection; California Health and Human Services; Energy; Labor and Workforce Development; Resources; Technology, Trade, and Commerce; and Youth and Adult Correctional.

Whenever the term “Agriculture and Services Agency” appears in any law, it means the “State and Consumer Services Agency,” and whenever the term “Secretary of Agriculture and Services Agency” appears in any law, it means the “Secretary of State and Consumer Services.”

Whenever the term “Business and Transportation Agency” appears in any law, it means the “Business, Transportation and Housing Agency,” and whenever the term “Secretary of the Business and Transportation Agency” appears in any law, it means the “Secretary of Business, Transportation and Housing.”

Whenever the term “Health and Welfare Agency” appears in any law, it means the “California Health and Human Services Agency,” and whenever the term “Secretary of the Health and Welfare Agency” appears in any law, it means the “Secretary of California Health and Human Services.”